

EXHIBIT 1

EXPERT REPORT OF ELIZABETH BUCAR, Ph.D.

Pursuant to Federal Rule of Civil Procedure 26, I submit the following report prepared for Emery Celli Brinckerhoff Abady Ward & Maazel LLP on behalf of plaintiffs and the plaintiff class in the action entitled *Clark, et al. v City of New York*, No. 18 Civ. 02334 (S.D.N.Y.).

I have been asked to provide expert testimony concerning religious head coverings. Specifically, I have been asked to answer the following two questions: (1) Why, if at all, are religious head coverings different from other head coverings, and (2) What harms, if any, are uniquely associated with the compulsory removal of religious head coverings?

My report has five parts: (I) Executive Summary; (II) Qualifications; (III) Methodology of Religious Studies; (IV) General Discussion; and (V) Conclusion.

I. Executive Summary

Religious head coverings are different from other types of head coverings because they are worn based on an individual's sincerely held religious beliefs and comprise part of the religious life and practice of a religious individual and/or community. Religious coverings may express religious commitments and/or act as techniques to create fidelity to those commitments. Wearing a religious head covering is the manifestation of the relationship between religious belief and practice: a physical expression of not only sincerely held religious beliefs but also the way religious beliefs are created and reinforced through embodied conduct.

When religious head coverings are forcibly removed, the resulting harm is qualitatively and quantitatively different from the mere curtailment of sartorial choice because of the reasons that make religious head coverings different from other head coverings. Coerced removal interferes with an individual's religious practice in multiple ways, including preventing their participation in rituals, taking away a method of forming and expressing religious identity, and impeding a means of moral training. The harm is best characterized as a type of what American philosopher Joel Feinberg terms "profound offense" because it is a core trauma to a religious practitioner's sense of self. This already egregious harm is sharpened when the removal of religious head coverings is compelled by State actors—individuals who are supposed to protect religious free exercise, not sabotage it.

II. Qualifications

I am Professor of Religion and Dean's Leadership Fellow at Northeastern University. I received a B.A. with honors in government from Harvard University in 1996, a M.A. in religious studies from the University of Chicago in 2001, and a Ph.D. in religious ethics from the University of Chicago in 2006 where I focused my studies on comparative religion and religious ethics. Prior to joining the faculty at Northeastern University, I held a postdoctoral position at Georgetown University and a faculty position at the University of North Carolina at Greensboro.

For the past twenty years, the central focus of my research has been on understanding the meaning and significance of everyday religious practices in multiple religious traditions. I have

sole-authored four academic books and co-edited two others, all of which deal with the significance of religious practices to religious believers. I am the Associate Editor for a new three-volume reference series on religious ethics that will be published by Wiley later this year, and Associate Editor of the *Journal of Religious Ethics*, the premier academic journal in the sub-field of religious ethics. I am considered one of the leading experts in comparative religious ethics.

Two of my books focus specifically on religious clothing. My 2012 book, *The Islamic Veil: A Beginners Guide* (Oneworld, 2012), takes a global and historical perspective on Islamic head covering, describing how the religious meanings of this practice are rooted in sacred texts and communities of interpretation. My last book, *Pious Fashion: How Muslim Women Dress* (Harvard, 2017), was the winner of the 2018 Costume Society of America Millia Davenport Publication Award. It is a guide to how clothing choices play an important role in the religious lives of young Muslim women. In addition, my new book, *Stealing My Religion* (Harvard, in press and expected summer 2022), has a chapter devoted to religious clothing and discusses head coverings ranging from Sikh turbans to papal miters. I have also published widely in peer-reviewed academic journals and in edited volumes on the role of head coverings in religious life. My work on this topic has been supported by grants from the American Association of University Women, American Council of Learned Societies, Enhancing Life Project at University of Chicago, Human Rights Program at the University of Chicago, and Theology of Character Project at Wake Forest University.

I am regarded as one of the leading experts on religious head coverings and am frequently asked to deliver public lectures, review academic papers, referee book manuscripts, serve as a consultant on grant-funded research, write reference material, and provide background and context for media on the subject.

For further details, please see my c.v, attached as Appendix A.

My hourly rate for preparation of this report and testimony is \$300.00

I have not testified in the last four years.

III. Methodology of Religious Studies

The methodological basis of my response to the two questions posed derives from the academic study of religion and how that study understands the significance of religious practice. I draw from different academic frameworks and definitions, my own research, and the published work of other scholars.

What we now think of as religion has had a central role in virtually all cultures throughout history, but the academic study of religion did not emerge until the nineteenth century. Public American universities began to create departments of religious studies in the late 1950s and today these units are integral parts of how the humanities are organized on college and university

campuses. The American Academy of Religion is the largest scholarly society dedicated to the academic study of religion and currently has more than 8,000 members around the world.¹

The purpose of religious studies is to better understand and analyze beliefs, practices, traditions, communities, artifacts, and other phenomena we call “religious.” The academic study of religion is an interdisciplinary field, incorporating textual studies, language studies, anthropology, history, philosophy, political science, economics, and sociology, among other disciplinary approaches.

My research on religious head coverings relies on philosophical ethical categories (such as virtue); textual studies of sacred texts (such as the Quran, Bible, and Talmud); and ethnography, an anthropological technique that uses observation and informal interviews of religious participants to understand the meanings and importance of forms of public religious dress.

In his widely read and cited essay “Religion, Religions, Religious,” Jonathan Z. Smith observed that religious studies scholars tend to use either theological or anthropological definitions of religions.²

Protestant theologian and philosopher Paul Tillich offered a common theological formulation of religion: it is defined by an “ultimate concern.”³ When Tillich spoke of ultimate concern, he had in mind Christian theism, but scholars have applied his definition to other religious traditions to describe religion as a set of beliefs about the divine, the universe, and metaphysics.

In contrast, anthropological definitions of religion emphasize religion as a human activity—that is, as a set of practices. This focuses scholarly attention on how systems of religious symbols give meaning to human life.⁴ One advantage to thinking about religion in this way is that it allows us to understand the role of practices, and not just beliefs, in religious life. Malory Nye, author of *Religion: The Basics*, provides an anthropological understanding of religion organized around defining religion grammatically as a verb instead of a noun:

I would argue that culture is not a thing in itself; it is a process, a form of activity that is ongoing and fluid; it is something that is done by people. One way to describe this may be to say that culture is culturing (as an activity, not as a thing)—when we practice our culture we are culturing. . . . This is also a way in which we can describe the practice of

¹<https://www.aarweb.org>.

² Jonathan Z. Smith, “Religion, Religions, Religious,” *Critical Terms for Religious Studies*, ed. Mark Taylor (Chicago, IL: University of Chicago, 1998): 269-284.

³ This ultimate concern is manifested, according to Tillich, ethically “as the unconditional seriousness of moral demand,” intellectually as “the passionate longing for ultimate reality,” and aesthetically as the “desire to experience ultimate meaning.” Paul Tillich, *Theology of Culture*, ed. Robert Kimball (New York: Oxford University Press, 1959), 7–8.

⁴ Clifford Geertz’s anthropological definition of religion is a classic example: “(1) A system of symbols which act to (2) establish powerful, pervasive, and long-lasting moods and motivations in men [*sic*] by (3) formulating conceptions of a general order of existence and (4) clothing these conceptions with such an aura of factuality that (5) the moods and motivations seem uniquely realistic.” Clifford Geertz, “Religion as a Cultural System,” in *The Interpretation of Cultures* (New York: Basic Books, 1973), 90.

religion, as a process of religioning (as doing religion, rather than thinking of religion as a thing in itself).⁵

For the purposes of this report, I will use the following working definition of “religion”: *human practices that are connected to histories of interpretation, systems of ethics, and broader metaphysical and cosmological claims*. This definition integrates both theological and anthropological scholarly approaches to religion in order to provide a theoretical framework for understanding the role of everyday practices like clothing in religious life. Combining these approaches is appropriate here, where the scope of my opinion incorporates both perspectives.

To summarize, religious studies scholars understand religion to be comprised of both beliefs and practices. To declare that one is religiously affiliated—for instance, “I am a Muslim woman”—means more than subscribing to a tradition’s beliefs; it also means participating in rituals, being part of a community of practice, and trying to live a moral life. And for many religious traditions, correct practice does not necessarily come after belief. In fact, practice may be the way beliefs—such as a sense of self, commitment to core values, and understanding of the universe—are created in the first place. Following Malory Nye, if religion is a verb we do instead of a noun we possess, if we are doing the religious things, we are doing religion. And thus when doing religious things is impeded, so is the free exercise of religion.

Finally, a central tenet of religious studies is that diversity is part of the reality of religious traditions and communities. Not all members of a community hold the same beliefs, and the ways religious communities interpret what practices are required changes over time. Consensus is unnecessary for a practice to be correct practice, or religious orthopraxy. Thus, scholars of religious studies do not count as properly religious only those practices about which there is consensus. To assume otherwise would be like saying keeping kosher is not a religious practice because some Jewish people don’t observe it.

This means as a scholar of religious studies I do not consider universal adoption of religious head coverings the litmus test for whether covering practices are properly religious, nor do I expect that religious head coverings will look the same or even be justified by the same religious ideas by all believers within and across religions.

IV. General Discussion

A. What Makes Religious Head Coverings Distinct?

People wear head coverings for various reasons, including protection from the elements, expression of style, and allegiance to a sports team. What makes religious head coverings distinct is that they are worn for religious reasons, have religious meanings, and do religious things. In other words, religious head coverings (as opposed to other types of head coverings) are part of the way people engage with and practice religion.

Religious head covering have various types of religious meaning that cut across religious traditions and communities. For the purposes of this report, I have summarized common

⁵ Malory Nye, *Religion: The Basics*, 2nd ed. (New York: Routledge, 2004), 55.

religious uses under three categories: participation in ritual; creation and communication of identity; and moral training. What these three religious uses of head coverings have in common is that they demonstrate that the practice of covering not only functions to express religious commitments but is also a technique to create fidelity to those commitments. Wearing a head covering is an example of where the relationship between religious belief and practice is manifested: a physical expression of sincerely held religious beliefs but also the way those religious beliefs are created and reinforced in the first place. Covering is also a type of religious practice that is, for some practitioners, obligatory both inside and outside of strictly religious settings.

i. Participation in religious ritual

An integral part of religious life, religious rituals involve a series of actions performed in a fixed order as a part of worship. Specific forms of head coverings are often part of the set form of the ritual and in those cases must be worn to participate.

Religious leaders wear head coverings as part of their liturgical vestments during rituals to be visually identified as a representative of God on earth. For example, Roman Catholic bishops wear a miter, a peaked head covering, during specified times such as in the seasons of Advent and Lent, on fast days, during penitential processions, and during the singing of the *Te Deum* at mass.

Lay religious practitioners also wear religious head coverings during ceremonies to sanctify the body by sartorially orienting it to the divine. A veil is common in many Christian marriage ceremonies and some Christian women wear a head covering during public worship and private prayer. Some Jewish women wear headscarves while praying and many Jewish men cover their head with a kippah or yarmulke when they pray or attend Jewish funerals or weddings.

For some, a religious head covering serves to ritualize everyday life; it is an embodied practice that reminds the practitioner to continuously strive for religious goals, such as a deeper spiritual connection with the divine, even during mundane tasks. For example, wearing a hijab while performing everyday daily activities, like going to work or running errands, provides a way to constantly and consistently orient oneself to God. In this way, a religious head covering can serve as a practice fundamental to how religious believers navigate even spaces and activities that are not explicitly religious.

ii. Creation and communication of religious identity

Identity is a fundamental concept in modern social psychology. Identity is both personal and communal: it is an individual attribute—"I have an identity"—but it is also relational insofar as it depends on how specific groups define in-group membership. For individuals who are religiously affiliated, religion is part of their identity and thus part of their sense of self and belonging.

Religious head coverings are an example of a practice that communicates and creates personal identity and community belonging. This is true both for “consecrated” individuals, who devote themselves to religious service, but also for “laity,” or common believers.

Head covering are one way consecrated individuals, such as clergy or members of religious orders, communicate their identity to others. A nun’s habit, a monk’s hood, and a Shinto priest’s peaked cap known as *tate-eboshi* are all examples of visible public markers of a religious vocation and membership in a particular religious family. These head coverings signify that the wearer has devoted their life to a religious vocation. But headgear also does religious work in the public sphere. Pope John Paul II, for instance, articulated the rationale for religious clothing in theological terms: they are a way the Church makes “*her presence visible in everyday life*, especially in contemporary culture, which is often very secularized.” He goes on to say that “the Church has a right to expect a significant contribution from consecrated persons” in this work, “called as they are in every situation to bear clear witness that they belong to Christ.”⁶

Head coverings are also an important religious practice for common believers as a way to communicate their identity to others. Put differently, there are religious reasons for being visibly identifiable as from a specific religious community. For instance, those in the Amish community understand their separation from the rest of society as part of their religious calling. And for this reason, Amish women cover their heads with a simple white or black organdy head bonnet and Amish men wear a distinctive type of straw hat when they are out of the house. Sikhs intentionally maintain a distinct physical identity in public; the turban—which can be worn by Sikh men and women—is the most visible aspect of this physical presentation.

Religious head coverings are important not only for belonging to a religious community, but for constituting a religious community in the first place. Put differently, in addition to *expressing* religious identity, religious head coverings can be part of the way religious identity *is created*. Wearing specific clothes can affect our sense of self. An Amish bonnet or a Sikh turban, for instance, are reminders of the wearers’ religious affiliation. And as a practice shared by multiple members of a religious community, religious head coverings can promote a sense of common identity and group connection. Finally, there is a certain dignity that goes along with wearing religious head coverings since they are associated with respect and devotion to God. In these ways, a religious head covering not only communicates a religious identity, but can also be a mechanism through which group and personal religious identity is created.

iii. Religious moral training

Morality is a set of customs and habits that shape how we think we ought to live. There is a central role for morality in religion, and many religious practices are about enacting the core values of a religious tradition, whether those values be about God’s commands, or abiding by metaphysical rules in order to make our social interactions more just.

⁶ John Paul II, *Vita Consecrata*, para. 25 (emphasis in original). https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_25031996_vita-consecrata.html

Religious head coverings serve important roles in the moral life of religious communities. They are examples of bodily practices that communicate commitments to religious values and self-techniques engaged in to create the believer's good moral character.

A kippah, for example, is a sign of respect and reverence to God. Wearing a Sikh turban asserts a public commitment to the values of the Sikh religion, such as service and honesty. And several forms of religious head coverings convey commitments to humility and modesty, including an Islamic hijab, a Christian veil, and a Jewish hat, scarf, or wig ("sheitel").

Religious head coverings do not only express a commitment to various religious values, they are also forms of moral training. Ethical behavior is a skill that takes practice, and religious traditions and communities encourage believers to do certain things in order to instill commitments to specific moral values—which is necessary to be a good person. Religious head coverings are one mechanism by which a religious believer develops their moral character and becomes a pious religious subject.

If we take the example of hijab, for instance, in a 2012 study researchers asked 1,733 American Muslim women "Why did you decide to wear a Muslim head covering?" The most popular response—selected by 82 percent of the participants—was "personal piety." The piety associated with hijab operates on several levels. There is corporate piety, insofar as the hijab creates a gender-segregated social space. There is interpersonal piety, whereby hijab organizes the interactions of unrelated men and women. And there is personal piety: hijab has moral implications for the wearer herself. This makes the "personal" of the response "personal piety" an important modifier. It means that, for the majority of the study's respondents, hijab is about their own character. Or, put differently, the researchers found that for most American Muslim women who wear a hijab, the garment is understood as an important practice to being a good Muslim.

The philosophical concept of virtue is helpful for understanding how religious head covering creates personal piety.⁷ Virtue ethics is an ethical theory that sees the cultivation of moral excellences as important to living an ethical life. In many formulations, including the work of Aristotle and Confucius, belief, understanding, and instruction are not enough to transform a person into a good person: specific actions—repetitive behavior and physical habits—are also part of moral development. A pianist's physical practice creates dexterity, muscle memory, and a good ear—all necessary to become a good musician. In the same way, religious practices transform the person who does them by creating dispositions to behave a certain way.

Religious practices are understood by many religious actors as the way to inhabit norms. An Islamic or Christian veil builds the habits necessary to cultivate the virtues of modesty, humility, or obedience. A kippah fosters respect for God. A Sikh turban is part of how a Sikh cultivates

⁷ See Elizabeth Bucar, "Islamic Virtue Ethics," in *The Oxford Handbook of Virtue*, ed. Nancy E. Snow (Oxford: Oxford University Press, 2017); Elizabeth M. Bucar, "Cultivating Virtues through Sartorial Practices: The Case of the Islamic Veil in Indonesia," in *Character: New Directions from Theology*, ed. Christian B. Miller et al. (Oxford: Oxford University Press, 2015), 590–602; and "Islam and the Cultivation of Character: Ibn Miskawayh's Synthesis and the Case of the Veil," in *Cultivating Virtue: Perspectives from Philosophy, Theology, and Psychology*, ed. Nancy E. Snow (Oxford: Oxford University Press, 2014), 197–226.

their own spirituality while being of service to humanity. All these religious head coverings are part of a program of moral training, much as musicians log hours of daily practice to hone their craft. A religious head covering is not only a way *to be* a good religious subject, but also a technique *to become* one.

B. What Harms Are Uniquely Associated With the Compulsory Removal of Religious Head Coverings?

The compulsory removal of religious head coverings results in distinct harms because of its associated religious meanings.

i. *Specific harms associated with ritual, identity, and morality*

Because religious head covering are worn for religious reasons, forcible removal interferes with an individual's ability to practice their religion across multiple axes, including: (i) ritual; (ii) identity; and (iii) morality.

First, some religious rituals, such as forms of public worship, require a head covering, so their removal can be an obstacle to participating in religious rituals. More generally, religious head coverings are the way some practitioners ritualize their everyday life, by, for instance, serving as a constant reminder of their submission to God. When they are removed, the individual's most fundamental orientation in the world is ruptured.

Second, since religious head coverings have an important role in communicating religious identity, their compulsory removal prevents the expression of membership in a religious group. For some individuals, being visibly religious—whether visibly Amish, Sikh, Muslim, Jewish, etc.—is understood to be a religious obligation. And as a way a practitioner's sense of self is cultivated and communicated, the forcible removal of a head covering can be experienced as an act of violence against one's core sense of who they are. Additionally, because wearing a head coverings is not only the expression of a religious identity but also the way such an identity is created and reinforced, its forcible removal interferes with a technique meant to religiously transform the wearer, not merely communicate something to others.

Third, the central role religious head coverings play in the religious moral life means their forcible removal prevents an individual from comporting themselves in public in a manner they believe is ethical. For the faithful who believe covering the head is a religious obligation, to remove a head covering is not like removing a hat. It is like being stripped naked: removal is dehumanizing and a severe affront to someone's dignity. And since a head covering not only expresses commitments to religious values, but is also how those commitments are created in the first place, removing a religious head covering interferes with a practitioner's ability to engage in religious moral training.

ii. *Nature of the harm of compulsory removal of religious head coverings: profound offense and the State*

While individual experiences vary, the harm from the forced removal of a religious head covering is significant. The degree of harm associated with the forcible removal of a religious head covering is what American philosopher Joel Feinberg calls “profound offense.”

Feinberg first distinguishes “harm” from “offense” and, then, a “minor offense” from a “profound offense.” He defines harm as a setback to someone’s interests, while an offense does more insofar as it affects one’s state of mind, making one feel disgusted, outraged, or appalled. Feinberg further distinguishes a minor offense from a profound offense. A minor offense is an affront to one’s senses or one’s lower sensibilities. It is a nuisance. A profound offense, in contrast, is more egregious. It is, in Feinberg’s words, “deep, profound, shattering, serious.”⁸ Actions that are profoundly offensive do more than put one in an unpleasant state of mind. They are an affront to one’s core values and sense of self. As Feinberg put it, they offend “*us* and not merely our senses and lower order sensibilities.”⁹ Feinberg names voyeurism, desecration of venerated symbols, and mistreatment of a corpse as profoundly offensive.

Forcible removal of a religious head covering, in my opinion, is an example of a profound offense. It can be experienced as an affront to one’s core values, sense of self, and even orientation in the world. Like voyeurism, forced removal of a religious head covering results in embarrassment and humiliation. It is an affront to one’s dignity.

In the case where the compulsory removal of a religious head covering is formally demanded by, and with the imprimatur of, the State, the profound offense is even more egregious. A case in which a private citizen deliberately snatches off a religious head covering in a public street—in other words, a hate crime—would certainly constitute profound offense. But when such an act is sanctioned by the State in a written policy that not only allows but requires government officials to strip off head coverings, the ensuing coerced removal is uniquely and profoundly offensive for three reasons. First, when the State is the agent instigating the removal of a religious head covering, which interferes with the individual’s ability to freely practice their religion, the attack on religious practice is being perpetrated by the very entity that is supposed to protect religious freedom. Second, when the compulsory removal occurs during detention, the removal is both utterly involuntary and unavoidable. Finally, when State actors coerce the removal of religious head coverings, there is greater potential for a genuine and lasting trauma to the victim. For example, the violation to personal privacy and security that occurs when a State actor forcibly removes a religious head covering can leave the individual feeling vulnerable, scared, and distrustful of the very individuals charged with serving and protecting. In short, when the State mandates the removal of a religious head covering, an already profound offense is intensified and compounded.

⁸ Joel Feinberg, *The Moral Limits of the Criminal Law*, vol. 2, *Offense to Others* (Oxford: Oxford University Press, 1985): 58.

⁹ *Ibid.*, 59 (emphasis in original).

V. Conclusion

As to Question One, in my opinion, religious head coverings are distinct from other head coverings because, for many religious practitioners, a head covering is part of their religious life. Covering both expresses a believer's religious commitments and helps to create them in the first place by, for example, serving important functions in religious rituals, creating and communicating religious identity, and training to lead a moral life.

As to Question Two, in my opinion, the involuntary removal of a religious head covering—which may have various religious meanings and serve various religious functions—causes unique harm along the same three axes of ritual, identity, and morality. An individual forced to remove their head covering cannot effectively participate in religious rites, express their membership in a particular religious community, or behave in a way they believe to be moral given their particular religious commitments. These harms are exacerbated when the State forcibly removes religious coverings and thereby interferes with an individual's ability to practice their religion. State-mandated removal harms the individual by diminishing, degrading, and deterring an ongoing religious practice, exercise, and expression; this makes it, in my opinion, profoundly offensive.



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